

Town of Nolensville
Board of Mayor and Aldermen Meeting
Date: June 28, 2007, Time 7:00 p.m.
Nolensville Elementary School

Mayor Beth Lothers opened the meeting at 7:02 p.m. Members present were Mayor Lothers, Aldermen Jimmy Alexander, Joe Curtsinger, Tommy Dugger, and Ken Thomas. Staff present: Counsel Robert Notestine, Town Planner Henry Laird, Engineer Don Swartz and Recorder Cindy Lancaster. There were 30 citizens present.

Prayer and pledge was led by Alderman Ken Thomas.

Citizens Input:

Mrs. Lynda Moses, Rock Springs Road, noted that she purchased American flags to off-set the cost for the community web-site. She noted that these flags may be purchased from her for \$3.00.

Alderman Thomas made a motion to approve the May Treasurer's Report, Alderman Dugger seconded, and this passed unanimously.

COMMITTEE REPORTS:

Chair Rick Owens reported for the Planning Commission.

- Final plat was approved for Bennington
- Final plat was approved for Sunset Park
- Final plat was approved with conditions for Nolen Park
- Zoning amendment proposals were passed to forward to the BOMA

Alderman Ken Thomas reported for the Historic Commission.

- Due to application withdrawal by Mr. McCanless the meeting was cancelled

Due to an emergency call Fire Chief Presley Hughes was unable to report for the Nolensville Volunteer Fire Department.

Henry Laird reported for the Planning Department.

- Various zoning ordinance amendments are being reviewed
- Impact fee project is ongoing
- Met with developers of perspective businesses

Mr. Michael Blanks, Building Official, introduced Mr. Bennie McCoy. He has been hired as a Building Inspector for the Town.

Police Chief Paul Rigsby reported for the Police Department.

- Noted that due to the date of the meeting written stats were not distributed to the board
- Introduced and swore in new police officer, Mr. Troy Buckley, noting he was previously the Chief of Coopertown and a Detective in Spring Hill.

Mr. Bob Hayes reported for the Public Works Department.

- Continue to mow roads
- Continue with dead animal removal
- 4th of July function preparation is ongoing
- One tractor is not functioning, but should be up in a couple of days.

Mr. Hayes conveyed to the board if they had any concerns or suggestions to feel free to contact him or John.

Mayor Lothers noted that Tonia Smith will be leaving employment at the Town. A new employee has been hired to fill this vacancy and also become the Impact Fee Administrator dependent upon passage of the Impact fee tonight. Mayor Lothers introduced Mrs. Judy Simerson. The Mayor noted that she was previously employed as Town Recorder by Germantown and will be an asset for the Town of Nolensville.

Alderman Ken Thomas reported for the Events Committee

- Meetings have been ongoing every Monday to prepare for the 4th Celebration
- Restaurants will be providing food
- Volunteers are still needed with training being given on Monday prior to the Wednesday Celebration
- Children's games will be available
- Police and Fire Department have worked hard
- Movie night is going very well

Mayor Lothers noted that the Nolensville Dispatch will have a map indicating the appropriate traffic paths. This will alert everyone about the planned detours. She stated that walkers are encouraged to bring their flashlights as it will be dark following the show. Alderman Thomas noted that First United Methodist Church is assisting and he thanked them for providing music for the event. He further stated that the Youth Athletic Department will provide concessions.

Mayor's Report:

- a. Rocky Fork Realignment Update

Mayor Lothers noted that there will be reading of a resolution which is on the agenda in regards to the Rocky Fork Road realignment. She noted she is asking the board to give approval to move forward on this project.

Mr. Swartz, Town Engineer, noted that it has been discovered that the water line relocation will cost substantially more than previously anticipated, but can be completed within the construction time frame. He noted that Atmos Energy is currently reviewing their gas line to see if it will interfere with the relocation. Mayor Lothers noted that she has been in contact

with a property owner that will be affected by the realignment. Mr. Moon, Developer of Silver Stream, had previously agreed to give land to the property owner. She noted the property owner wanted a real estate expert to review his property to see if it would change his value in donating additional right of way. Mayor Lothers stated that he has requested that an outside engineer analyze the topography, in addition to the Town analyzing the current zoning to see if there would be a potential conflict. She stated that it has been determined that the road will be within 22 feet from the renter that he currently has at that location. She stated that the property owner feels that he may lose that tenant. Mayor Lothers stated that the property owner has concern of the short term effects and has asked for \$24,000 from the Town for payment for this right of way. She demonstrated on the power point so that this right of way could be shown to the board.

Mayor Lothers noted that she had met with the county in regards to the park entrances and they wanted more of their staff to go to the site for further review. She noted that the county conveyed to her that they have several parks in the county that have only one-way in and out of the facility. The Town is currently compiling one other suggestion and Mayor Anderson has agreed to review this suggestion. She noted that one Recreation Board Member compiled a map indicating all families residential location that utilized the park. She stated that she has reviewed the other parks within Williamson County that have one way in and out and will present the difference between the locations.

Alderman Curtsinger asked the location of the land that is being offered to the property owner. He inquired to how the Town can make another property owner give up land. Mayor Lothers noted that Mr. Moon has agreed to donate the land on the back side of the property to the property owner. Alderman Alexander noted that the property behind the home, which was being offered, is a different zoning. Alderman Curtsinger questioned if Mr. Moon would give the Town access to the property. Alderman Curtsinger further asked if Mr. Moon gave the Town access to sewer. Mayor Lothers stated that it was her understanding that Mr. Moon has agreed to bring the sewer to the property owner. The property owner has been assured a tap. Alderman Curtsinger inquired if the sewer could be brought up to Nolensville road? Mayor Lothers stated that she would hope that Metro Sewer would look at the possibility to bring it to Nolensville Road. Alderman Curtsinger stated that he would like to see it brought up to Nolensville Road. Mayor Lothers stated that it was her understanding anyone could tie on to the sewer. Mr. Swartz stated that to extend sewer to more than one individual it becomes a public extension instead of a private extension. Alderman Curtsinger asked if it couldn't be made into a public extension. Counsel Notestine stated that the Town could probably go to Metro and make this request although; Nolensville would probably have to bear the cost. Alderman Curtsinger stated that he felt this request should be made to Metro. Mayor Lothers stated that this could be investigated.

b. Grant Updates

Mayor Lothers noted that the Town has received information that the Safe Routes to School grant through TDOT should notify the awarding municipalities at the end of August. She noted that previously the Town was told that notifications would be made by the end of May. She further noted that Beazer Homes and Mr. Kevin Fortney with Williamson County have

worked hard on the sidewalk project for the school. She asked that the community again write a letter to the Governor to support the trail project and addresses will be posted on the web-site.

c. Other

Mayor Lothers noted that the week of July 16th through the 20th is being reviewed for a workshop to consider the FEMA application. Alderman Thomas noted that he would be out of town that week. Mayor Lothers noted that this would be scheduled and forwarded by email with the future date and time.

Public hearing for ordinance #07-09, an ordinance to amend zoning ordinance 04-09, in regards to landscaping, lighting, and parking areas.

Mr. Laird noted this proposed amendment is to give flexibility for approval to the Planning Commission in regards to landscaping, lighting, and parking areas. He noted that the Planning Commission already has some authority and this will give them further authority on these minor issues. He noted that the word variance could be removed to give the Planning Commission adjustment authority only. He said that he would have that wording for the board by the next meeting.

Alderman Alexander said that he felt this would be difficult, no matter what language was used. He stated that the Planning Commission has the authority in reviewing site plans, but they do not have authority to make adjustments or changes in any language in the zoning ordinance. He noted that this was his opinion.

Counsel Notestine noted that when the language stated variance he did not feel the Planning Commission had the power to grant a variance. He said that if it is managerial or minor, he feels that would be alright for the Planning Commission, although he said he would look over this again. Alderman Alexander stated that if the language was changed it may be doable.

There was no public comment.

Public hearing of ordinance #07-10, an ordinance to amend the Zoning Ordinance 04-09, in regards to the Historic District Overlay.

Mayor Lothers demonstrated to the board a map for their review. Mr. Laird noted that there are some text changes that would be forthcoming for the boards review prior to final reading.

There was no public comment.

Second reading of ordinance #07-11 an ordinance to amend Title 1, Chapter 1, of the Municipal Code of the Town of Nolensville in regards to fees. Alderman Dugger made a motion to approve this ordinance, Alderman Alexander seconded, and this was approved unanimously.

Second reading of ordinance #07-12 an ordinance to impose impact fees. Mayor Lothers made a motion to approve this ordinance, Alderman Dugger seconded.

Alderman Alexander noted that within the ordinance under the plan it indicates a connection at Kidd Road and Fly Road. He noted that this was not in the Town's Major Thoroughfare Plan. Mr. Laird noted that Florence and Hutcheson's opinion was due to the curves in McFarlin Road they felt this would work better.

Alderman Curtsinger noted that Section 5 under "Refunds", it states that refunds would be made. He noted that he doesn't feel that money should be refunded. He noted if the Town has justification for obtaining the money then the Town should not entertain the thought of refunding the money. Alderman Thomas stated that he thought at the workshop it was stated that this could be extended to ten years. Alderman Curtsinger stated that he felt that the Town doesn't have to refund those monies.

Mr. Clancy Mullins with Duncan and Associates stated that he feels the refund helps for the defensibility if this is challenged. He stated that cases have been won in Florida with this clause. Alderman Curtsinger asked how these amounts would be tracked. Mr. Mullins noted that this has been discussed with staff and he doesn't feel this will be hard to track. Alderman Curtsinger asked if seven years was a magic number. Mr. Mullins said that seven is not a significant number of years. Counsel Notestine stated that ten years is a magic number in Tennessee State Law.

Alderman Dugger noted that this places the burden on the Town to refund the money. He noted that he felt it should say may versus shall. Mr. Mullins stated that he has seen ordinances that place the burden on the person paying and not the Town. He stated that he would change the wording, but it should be so that they would be refunded. Counsel Notestine noted that it says shall be returned to the current owner. Mr. Mullins stated that an alternative would be to return to original payer.

Alderman Thomas noted that the effective date has been discussed and currently it reads 90 days. He stated that he would like to see it altered to 30 days. Mayor Lothers noted that staff is ready if it is enacted tonight. Mr. Laird stated that he would like to see a 30-day window. Mr. Blanks stated that due to staff changes he would like to see a 30 day window, although it would be the board's decision. Counsel Notestine noted that he felt if there was a reasonable implementation time this could be defended in court. Town Recorder Lancaster stated that accounting had been reviewed and this could be initiated upon passage. Mayor Lothers shared concern that a 30-day delay would create a run on permits.

Alderman Alexander asked if there have been any legal problems with this fee being imposed on platted lots. Mr. Mullins stated that if there is vested laws there may be, although he did not think it was a legal issue. Mayor Lothers noted that she did not know if it could be argued that it was an overnight thing after Florence and Hutcheson completed the infrastructure study last October. Alderman Dugger stated that he agreed. He noted that the Town has been discussing an impact fee for over a year and he did not see a need to wait 30 days.

Alderman Dugger made a motion to amend Section 409, under "Refunds", amend seven to ten, Alderman Curtsinger seconded and this was approved unanimously.

Mayor Lothers made a motion to amend page twelve the “90-day” clause to read “effective upon adoption” Alderman Dugger seconded and this amendment was approved unanimously.

Alderman Dugger asked for clarification in regards to all new development under section 5-407 – “Collection of Fees”. Mr. Mullins stated that he felt the word “new” could be removed. Counsel Notestine noted that someone could say that it may be retroactive if the appropriate wording is not used.

Alderman Curtsinger made a motion under Section 5-407 to remove “new” and replace with “affected,” and replace “first” with “each”. For clarification Alderman Curtsinger withdrew his motion and restated. Mayor Lothers seconded. This amendment was approved unanimously.

Alderman Dugger asked for clarification on Page 10, Section 5-410. He noted that he had a concern under Subsection 7 in regards to figuring credits you must go back to the beginning of the development.

For further clarification Mr. Mullins asked if the amendments were from the first reading or the strike-out version that was distributed. Mayor Lothers noted that the board must make an amendment to reflect the lower amount revised by the study which is in the strike-out version. Mr. Laird noted that Mr. Mullins had made revisions and a copy of this document was before the board. Counsel Notestine stated that a motion can be made to accept Mr. Mullins amendments.

Mayor Lothers made a motion to accept the amendments made to the draft which is incorporated in the actual text before the board. Alderman Alexander seconded and this passed unanimously.

Alderman Alexander noted that the board just accepted the version before them; therefore the previous amendments have not been officially made. Counsel Notestine clarified that the amendments could remain.

Alderman Dugger stated that he felt it is quite a burden to place on staff in regards to what improvements that have been made in the past, such as repaving Britain Lane that the Catalina Development will be performing. He asked if this would be a project that should get credit or not get credit. He further asked when new plans were approved by the Planning Commission would it state specific work (i.e. turning lane) or will it solely be the determination of the Administer. Mayor Lothers asked if questions arise would Duncan and Associates be available for clarification. Mr. Mullins replied they would be at the town’s service. He noted that the Town can not spend impact fees for repaving, although it must improve capacity. Mr. Laird noted that a guide is in the Florence and Hutcheson study.

Alderman Thomas asked if the Town foresees a team of people that will review the request to make the determination so that one person does not make this determination. Mayor Lothers clarified with Duncan and Associates that when a developer submits plans Duncan would review this so that the Town has interpreted the ordinance correctly. Mr. Mullins stated that this could be performed. Alderman Dugger stated that with new development it should be an easier process.

Counsel Notestine noted that prior to passage he wanted the board to be aware that any appeals are brought before this Board.

Alderman Dugger asked if Catalina Subdivision obtains a credit, would it be a windfall to him due to the Developer already having those costs built in. Mayor Lothers stated that she did not know if this board should get into the economics of that situation. She stated that the goal of the Town is to be fair. It was noted that the developer had committed to a turn lane. Mr. Mullins stated that would be a pre-ordinance credit.

Mayor Lothers asked for clarification on page 4, Section 5-404. She noted that the words say pro-rated, should it say rounded. Mr. Mullins clarified this statement explained pro-rated may be the preferred term.

Mrs. Carla Ediger noted on page 11, Section 5 –411 in “Administrative Charges”, it states that you “may” collect 2% above the impact fee that can go into the general fund. She noted that this board should review this and be clear if you want to obtain this 2%. Mr. Mullins clarified noting that this 2% would be in addition to the fee, not a part of the fee.

Alderman Dugger made a motion to amend Section 5-409 sub-section 5, and Section 5-411 sub-section 4 to delete the words “be entitled to” to read the Town “shall” assess a surcharge. Alderman Thomas seconded and this was unanimously approved

Alderman Dugger stated that he would like to note that in regards to a development “paying their way” on a 3,000 sq ft home being built in Nolensville, they have approximately \$4,500 in fees. Alderman Alexander stated that these are the highest fees in Williamson County. Mayor Lothers noted she has looked at the numbers and comes up with a \$200-\$300 difference. She stated that this board can keep track of how this is affecting the Town and reevaluate this situation. She noted that her concern is commercial coming to town. She stated that commercial revenue is generated into the general fund for operating cost. She stated that again this can be reviewed at a later date. Mayor Lothers noted that adequate facilities tax and Impact Fee does not pay salaries, therefore commercial revenue is important for General Fund.

Alderman Dugger stated that on page 10, the expiration of credit is up to ten years. He asked if this should be shortened. Mr. Mullins stated that he did not know if you have to have that provision. He stated that it is presumably a pre-ordinance credit, if a development is not completed within ten years they will begin paying the entire fee. Alderman Dugger asked where it states that it is a pre-ordinance credit. Alderman Curtsinger asked who would review these figures every three years. Mr. Mullins stated that it would be a reminder to staff to bring this forward. Alderman Curtsinger asked who would do the approval. Alderman Alexander stated that if changes are to be made it must go before this Board. Alderman Dugger said that the word “shall” means it must be done.

The vote was taken on this ordinance as amended, and was approved unanimously.
The Mayor recessed the meeting at 9:00 p.m.

The meeting was reconvened at 9:12 p.m.

First reading of ordinance #07-07 an ordinance to amend the Zoning Ordinance 04-09 in regards to Village Area lot standards.

Mr. Laird described this ordinance noting it was sent to Planning Commission and advanced on to this Board. He noted that it was sent back to the Planning Commission for further review and is now back before this Board. He noted that after further review the Planning Commission clarified a better guide and this ordinance was recommended unanimously by the Planning Commission. He noted this is an attempt to encourage low-impact development.

Alderman Dugger made a motion to approve this ordinance, Alderman Alexander seconded. Alderman Dugger asked if two off-street parking allowances would be sufficient. Mayor Lothers asked if he felt that a residence needed more than two parking spaces. Alderman Dugger said most homes have more than two vehicles. Alderman Alexander stated that he did not see this as a problem. He noted that he did not see a family with kids occupying these apartments; he saw more of a two-member family being at this location. Mayor Lothers stated that this is a minimum. The vote was then taken and approved unanimously.

First reading of ordinance #07-13 an ordinance to amend the Zoning Ordinance 04-09, in regards to permitted structures within setbacks

Mayor Lothers made a motion to approve this ordinance, Alderman Alexander seconded. Mr. Laird stated that staff has been working on the past interpretation in regards to what can be constructed within and outside the building envelope. The definition of a structure has been a question in the past. He stated that this ordinance is for clarification of the definition of “structure”, “building envelope,” and “building permit”. Mr. Michael Blanks noted that with this change it will make it reasonable to enforce. He stated that the current reading could include a mailbox or a bird bath. He stated that the Codes Department is in agreement with this ordinance.

Mr. Laird noted that this was approved unanimously by the Planning Commission. Mr. Laird then read the ordinance in its entirety.

Alderman Curtsinger asked for clarification on covered decks. Mr. Blanks stated that a covered deck is a structure and further noted that this will assist in issues that have been going before the Board of Zoning Appeals.

Alderman Alexander asked if there are generally drainage easements on the property line. Alderman Curtsinger asked where the five foot was determined. Mr. Laird stated that you can't do much with five feet. Alderman Curtsinger asked if it was dependent upon the size of the lot and size of the house. He stated that the whole idea of a PUD was to preserve open space. He stated that it was the look we were trying to achieve and with this ordinance we are losing this look. Mr. Blanks noted that this would not be throughout the subdivision. Alderman Curtsinger stated that by this ordinance you are taking away the enjoyment. Mayor Lothers noted there has been an intern that has reviewed this within the county. Mr. Blanks stated that a lot of work went into PUD's. He noted that in section 5 it allows the ER zone to have a fence, although it does not in PUD's. He stated that all best made plans need to be improved.

Alderman Alexander stated that because decks were allowed five foot from the property line is because the lots in Bent Creek are a lot smaller. Mayor Lothers stated that we changed the ordinance so this will not happen again and the minimum lot size is now 11,000 square feet. She noted that when she attended a conference she was told that the Town should look at the ordinance so that staff may enforce the ordinance correctly. A lot of BZA request indicate a need to look at the ordinance. Alderman Curtsinger stated that when Bent Creek came to Nolensville the board said the lots were too small and it was accepted by this Board. He stated that the entire intent was to preserve the open space. He stated that the only problems that we have had is when the builders have come in and built. He stated that we have only had a problem with one individual that keeps coming back.

Mayor Lothers stated that this issue has gone before Board of Zoning Appeals for numerous property owners. She stated that when she ran for Mayor she signed up to solve problems. She stated that to tell these people we are going to leave this ordinance the way it is, because we can, is not right.

Mr. Blanks stated that there are criteria within the subdivision. He noted that the Mayor made an excellent point. He stated that these are our citizens and if they come to us it is our duty to assist. Mayor Lothers noted that there have been several of these requests, not just one.

Alderman Curtsinger noted that the issue at hand should be addressed. The issue is the Mayor's friend making a BZA request. Mayor Lothers clarified the situation noting that this citizen contacted her in regards to clerical errors that was sent to him by Town Hall. He asked if a new application could be submitted indicating a new plan. Mayor Lothers contacted the town attorney and he confirmed that the BZA decision is final and could only be reviewed by Chancery Court. However, Counsel Notestine did say that a new application could be brought before the BZA with a new request. Mayor Lothers confirmed this understanding with a MTAS Consultant from Knoxville. She stated that she has done nothing improper and she will not have false accusations made. Alderman Curtsinger stated that the board is addressing PUDs with allowing the property owner to build five feet from the property line with an uncovered deck. He stated that you are giving them something you are not giving other people in the town. He noted that these people should be going to their homeowners association. Mayor Lothers stated that if you want to be mad at the original builders be mad at them, but don't stick it to the homeowners. It is the town regulations which prevent homeowners from enlarging their deck even by two feet.

Mayor Lothers then called for the question, Alderman Thomas second. All in favor of question were Mayor Lothers and Alderman Thomas. Opposed were Alderman Alexander, Curtsinger, and Dugger.

Alderman Dugger stated that he had a concern with five feet to a pocket park versus open space, as being a safety issue. He stated that if it is clear open space it would be alright, although if it is a pocket park it is different. Alderman Alexander stated that he has been to Ballenger Farms and he is not sure if residents on either side of a larger deck would appreciate that structure.

Alderman Curtsinger asked about chimneys being built three feet out. He inquired if it would encroach. Mr. Laird stated that it is closer. Mr. Blanks agreed that it is closer, but this is

common in others areas. He stated that ten feet on the rear and beside could possibly give you twenty feet. He further stated that he had trouble understanding how the Town began interpreting the ordinance that it has. Alderman Alexander stated that he recalled in talking with Metro, they agreed ours is like their ordinance. He stated that they have to make a difference with a roof being over the deck. Mr. Blanks stated that this is not a general rule of thumb for every lot. He noted that drainage easements have to be reviewed and various things must be taken into consideration.

Mr. Laird then went over his recommended amendments. Mayor Lothers made a motion to amend Section 3.1.”projecting not more than three feet into the required rear and side setback; flagpoles and two- family or dwellings, rear or side setbacks”. Alderman Dugger seconded and the amendment was approved unanimously. The vote was taken on passage of the ordinance as amended. This was approved by majority, Mayor Lothers, Aldermen Alexander, Dugger and Thomas for, and Alderman Curtsinger against.

Reading of resolution #07-08, a resolution to accept bids for the Rocky Fork realignment. Mayor Lothers made a motion to approve this resolution, Alderman Alexander seconded.

Alderman Thomas made a motion to amend by adding, “to acquire additional property for a right of way”, Alderman Dugger seconded.

Alderman Dugger asked if there was a maximum amount being considered. Counsel Notestine stated that a maximum amount should be noted. Alderman Alexander clarified that the property owner has agreed to \$24,000 with the rear property. Mayor Lothers stated that is a separate commitment between the property owner and the Developer Mr. Moon. She stated that the property owner has been promised things by this other individual and the promise has not come through. Alderman Alexander said then we should not take that into consideration. Mayor Lothers stated that the only other choice would be to review condemnation. She noted that there would be a cost that would be incurred to condemn property. She noted that the Town already has a lot of money invested in this project currently. She noted that staff has worked hard to keep this project on track. She stated that she is asking the board to keep this piece of the project moving forward. Alderman Curtsinger asked if the Mayor had this in writing. The mayor stated that she did. Alderman Thomas clarified that if this amendment passed the Town is agreeing to purchase this land with out the contingency of another’s action.

Alderman Dugger stated that the Town is not going to sign an agreement until the Town has the property for the right of way. Mayor Lothers stated that the Town is not going to begin the bid process unless the Board agrees to purchase the right of way. She stated the engineering plan has this right of way and we need to secure this right of way. Alderman Dugger said that the bid process should begin pretty rapidly after the right of way is acquired. Counsel Notestine noted that this resolution is asking to begin the bid process.

Alderman Alexander stated that if the Town accepts this bid there will be some cost involved in the survey and recording. Mayor Lothers stated it was her understanding that the survey has already been completed. Counsel Notestine noted that would be a negotiating portion. Alderman Alexander noted that a survey could be a cost up to \$3,000; Alderman Dugger noted

that \$3,000 was well within the Mayor's authority to spend. Alderman Thomas stated that in order to do it right we must move forward.

The vote was then taken on the amendment and passed unanimously.

Alderman Dugger asked if the Mayor would be accepting the bid. Mayor Lothers made a motion to remove the last whereas section in its entirety, Alderman Dugger seconded. This passed amendment unanimously. The vote was then taken to approve the resolution as amended. This passed unanimously.

The meeting adjourned at 10:15 p.m. by acclamation.

Respectfully submitted,

Approved,

Cindy Lancaster
Town Recorder

Beth Lothers
Mayor